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Electronic Filing Comes to State and Federal Courts

by James G. Apple

The era of the “paperless” courthouse arrived in both state and federal courts in January 1996.

In the first pilot program of its kind in the federal courts, a complaint in a maritime asbestos case was filed electronically on January 3, 1996, in the U.S. District Court for the Northern District of Ohio in Cleveland. The complaint was filed by a mass tort law firm from Detroit.

On January 17, 1996, in the first pilot program of its kind in a state court, a complaint in a “motor torts” case was electronically filed in the circuit court of Prince George’s County, Md. The complaint was filed by a local firm in Upper Marlboro, Md.

Past experiments in electronic filing have been conducted in selected large and complex cases in Delaware state courts, in the U.S. District Court for the Southern District of New York, and elsewhere using the complex litigation automated docket (CLAD) system, developed by LEXIS/NEXIS.

A limited electronic filing system has been in use in the Orange County, Cal., Superior Court since May 1995. The system currently operating there is restricted to filings in paternity cases from the family division of the local district attorney’s office. It is not yet open to other lawyers or types of cases. The office of the clerk of the Orange County Superior Court estimates that electronic filing will be open to all attorneys in family law cases in that court within 6 to 12 months.

In Prince George’s County, the pilot project is largely the result of efforts of a Maryland circuit court judge, Judge Arthur M. Monty Ahalt. Judge Ahalt is chair of the court technology committee for the courts of that county.

The pilot project in Maryland is a local, public—private partnership in which the county has linked up with a private consulting firm.

The consulting firm, working with Judge Ahalt’s committee, developed and implemented a system called JusticeLink and signed up 33 local lawyers for the pilot program. Three judges also participate. The consulting firm provided hardware and software, and trained key personnel in the clerk’s office for the first phase of the pilot program, in which electronic filing is limited to two classes of cases: foreclosure suits and motor torts.

The electronic filing system was installed in a 300,000 square foot, \$80 million courthouse addition that was opened in Upper Marlboro, the county seat, in 1992.

The force driving Judge Ahalt and his committee was an excess of paper. The problems in the courts were generated by “the fact that a judge needs paper to decide,” Judge Ahalt said. And court files generate a lot of paper.

Studies of the work of the local clerk’s office and judges in handling the paper necessary to process the 42,000 cases filed each year through the courts revealed that a case file is moved at least five times from the time of its creation to the time the case becomes final. In one year, court personnel would be actively involved in 210,000 movements of files.

Judge Ahalt cites other statistics to justify the move to electronic filing: The Prince George’s County courthouse has 20 circuit judges; the average file contains 40 pages; and in one year court personnel move 1.7 million documents to those judges. Those moves cost an estimated \$880,000 yearly in personnel expenditures.

Court estimates suggest that by 2000 the annual number of cases at the courthouse will have grown to 65,000, meaning 325,000 file movements, and the number of pages to



Maryland Circuit Court Judge Arthur M. Monty Ahalt sits in his chambers in Upper Marlboro, Md., with David R. Perkins, consultant. Judge Ahalt uses his computer for JusticeLink, the new electronic filing system that started in Prince George’s County, Md., in January. The system is the result of Judge Ahalt’s leadership in forming a public—private partnership between the courts in his county and a private consulting firm.

be transferred to the 20 judges would increase to 2.6 million. The personnel costs of those movements would escalate to over \$1 million.

JusticeLink changes all of that. Files are contained in computers, and a particular file can be called up by a judge on his or her computer screen at the press of a button. It takes the clerk’s office 15 days or more to file and docket a pleading manually. Electronic filing reduces the process to a few

minutes, with the computer doing the work.

In a typical foreclosure case in the Maryland court, a circuit court clerk analysis revealed 122 steps required from docketing the initial pleading to final judgment. Electronic filing reduced that number to 97, a 20% reduction. Some estimate that reductions in excess of 50% can be achieved on the full implementation of electronic filing.

See **FILING**, page 4

Benefits of Electronic Filing Will Push Courts to Invest in New Technologies

by Rich Goldschmidt & Gary Bockweg
Technology Enhancement Office
Administrative Office of the U.S. Courts

Electronic filing is likely to be an important area of investment for both state and federal courts over the next five years.

The most important potential benefits to the courts that will arise from using electronic case files will be the following:

- space savings;
- reduced paper handling;
- reduced data entry;
- enhanced information access; and
- enhanced information security.

The federal courts have been examining and experimenting with electronic filing since 1988 in order to identify new requirements and evaluate applicable technologies.

The broad view suggests that there are three basic kinds of information that courts must be able to manage: (1) text; (2) case and document management data; and (3) pictorial information, such as images and graphics.

There are commercial products available now that can provide cost-effective solutions to managing these different kinds of data and that make use of basic technology standards to allow exchanges between different kinds of computers and applications.

Two file formats are the current focus of experimental electronic filing efforts in the federal courts: portable document format (PDF) and electronic data interchange (EDI).

The federal courts are also exploring several different methods for document delivery, including via the Internet.

PDF is a standard for text and images

based on a specification published by a private software company. PDF preserves the page layout and formatting of documents from different computers and software. This allows a document to retain its original appearance when printed in a law office or a judge’s chambers, regardless of the word-processing or graphics software used by the office.

It is extremely simple to create PDF files using Windows or Macintosh software. PDF also preserves the appearance and layout of images and drawings. Any text in the documents and drawings can be searched and indexed for full text search databases.

PDF can also send motion pictures preserved in videotape format and has sophisticated capabilities for use in multimedia presentations, activities, and for complex documents, all of which may be needed in the future.

That system is particularly attractive for document archives because it incorporates images and drawings into the same file as the associated text in a manner that preserves their appearance and relationship—and long-term development of archives is important for many court documents.

PDF is currently under review for for-

See **BENEFITS**, page 3

JEDDI Corporation Electronic Filing Workshop and Annual Meeting, March 29–30, 1996

The JEDDI Corporation, a recently formed nonprofit corporation, will host a workshop on electronic filing, as well as its annual meeting, at the end of this month.

The workshop will be held March 29–30, 1996, at the Federal Judicial Center Auditorium, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC.

Persons interested in attending this workshop should contact Clyde Christofferson, 2915 Hunter Mill Rd., Suite 18, Oakton, VA 22124, phone: (703) 281-1775, fax: (703) 281-6385.

The following is the schedule of events:

Friday, March 29, 1996

- 8:00 a.m. JEDDI tutorial—basics of electronic filing and a history of the organization. (Judge B. Paul Cotter)
- 9:00 Welcome and introductions. (Judge Cotter)
- 9:15 Federal courts update—projects, status, schedules, and objectives. (Judge John D. Tinder, Judge Lee M. Jackwig, Mr. Timothy Fleming, Mr. Richard Goldschmidt)
- 9:45 State courts update—projects, status, schedules, and objectives. (Judge R. James Stroker, Mr. Larry Webster)
- 10:15 Break.
- 10:30 Administrative law courts update—projects, status, schedules, and objectives. (Judge Cotter)
- 11:00 Pilot project in Prince George’s County, Md. (Judge Arthur M. Monty Ahalt)

- 11:30 Digital signature update. (Mr. Michael Baum, Mr. Alan Asay)
- Noon Lunch.
- 1:15 p.m. Summary of various approaches and current frontiers. (Mr. Clyde Christofferson, Ms. Joan Countryman, Mr. Cleveland Thornton, Mr. Webster)
- 2:15 Small group break out sessions: workflow process; attorney requirements; clerk requirements; & chambers requirements.
- 3:15 Break.
- 3:30 Continuation of small group discussions.
- 5:00 Adjourn.

Saturday, March 30, 1996

- 9:00 a.m. Reports of small groups to plenary session.
- 10:15 Break.
- 10:30 What the private sector needs (panel discussion). (Mr. Dallas Powell, Mr. Conio Sessa, Mr. Michael Whetstone, Ms. Jane Sanchez, Mr. Jesse Alderson)
- 11:30 Working group charters and schedules.
- Noon Lunch.
- 1:15 p.m. JEDDI Corporation annual business meeting. (Judge Cotter)
- 2:00 Small group meetings—drafting guidelines: chambers; clerks; and lawyers.
- 3:30 Summary, announcements, and wrap-up. (Judge Cotter)
- 4:00 Adjourn. □

Inside . . .

- JEDDI Corporation 2
- Electronic Security 2
- Paperless Courts in Utah 3
- Starter Kits for Electronic Filing 4

Computer Signature Guidelines Support Electronic Security

by Michael S. Baum
of the Massachusetts bar
chair, Information Security Committee, ABA

Secure electronic filing recently took one step closer to reality.

After three years of meetings with business, legal, and technical experts from more than eight countries, the Information Security Committee of the Section of Science and Technology of the American Bar Association has developed draft digital (computer) signature guidelines.

The guidelines are a 100-page statement of definitions and principles intended to serve as a long-term unifying foundation for digital signature law across varied legal settings, either for adoption by the judiciary or for legislation.

The guidelines define the rights and responsibilities of certification authorities, subscribers (that is, persons to whom certificates have been issued), and relying parties (that is, persons who may use these certificates to authenticate messages but are not in privity with the certification authority). The guidelines also outline legal expectations concerning reliance on digital signatures generally.

The draft guidelines are significant as the first (and perhaps only) statement of legal principles for certificate-based use of digital signatures. They are particularly important in the absence of specific law on the subject (except for laws in Utah and California—both of which were influenced by the guidelines).

The draft guidelines were posted on the World Wide Web during a comment period, which closed on January 15, 1995.

During that time approximately 3,400 copies were downloaded. This large volume of downloads, indicating significant interest in them, coupled with the diverse and increasing number of legislative proposals that refer to the draft guidelines as authority, and the use of the guidelines by certification authorities, strongly suggests the development of a trade usage governed, or at least influenced, by the guidelines.

However, the guidelines are only one piece in the mosaic of secure digital signatures. Other Information Security Committee activities include the following:

- **Key Escrow Guidelines**—Key escrow is an arrangement where one party holds or acts as a custodian for a cryptographic key (private code) for another. This project seeks to develop a legal structure for such arrangements, whether the key escrow is internal (such as within a court on behalf of its employees) or external (such as a commercial escrow provider).

- **Model Electronic Commerce Agreement Addendum**—These would be added to "trading partner agreements," the documents that contain the terms governing electronic "trade" or communications between two or more organizations. The addendum will facilitate the use of secure cryptographic technologies, including digital signatures and certificates, with or without the use of certification authorities.

- **Digital Signature Legislation**—Although the committee voted not to further pursue the drafting of model digital signature legislation or to take any position with respect to the form of any such legislation, at future meetings it will review and debate legislative developments and will further discuss developing a set of "guiding principles" that might be of assistance to legislators contemplating enacting digital signature legislation. These principles would be applicable regardless of the legislative approach taken. The effort would seek to highlight guidance on the issues involved in such legislation for use by any jurisdiction and to delineate those issues that might at a minimum be included in an electronic commerce law.

- **Evidentiary Issues**—The work group on evidentiary matters will consider the special implications of electronic signatures for rules of evidence and deal with issues raised by the self-authentication of digitally signed messages.

The Information Security Committee Guidelines editorial group met in New York City in February to advance the completion of the guidelines. The Committee hopes to publish the guidelines in final form sometime during the spring of 1996.

A copy of the draft guidelines can be obtained from Ann Kowalsky, Manager, Section of Science and Technology, American Bar Association, 750 North Lake Shore Drive, Chicago, IL 60611, phone: (312) 988-5601. □

OBITER DICTUM

JEDDI Corporation Seeks National Standards for State and Federal Courts

by Hon. B. Paul Cotter Jr.
Chief Administrative Judge, U.S. Nuclear
Regulatory Commission and president of
JEDDI Corporation

Judges, court administrators, lawyers, and others connected with state and federal court systems recently formed a nonprofit corporation—the JEDDI (Judicial Electronic Data and Document Interchange) Corporation—to pursue and promote the establishment of national communications standards for computers in state and federal courts, particularly electronic filing. While the effort to automate courts has brought major benefits to overloaded court systems, each court, whether state or federal, has largely marched to its own tune.

Each electronic system, whether for docket control, scheduling, jury management, case management, imaging, or electronic filing, was developed independently, often with little thought of outside communications. Yet the courts need to communicate with virtually every part of our society.

The American National Standards Institute's (ANSI) Accredited Standards Committee (X.12) has addressed communications compatibility among computers. The general term for such communications is electronic data interchange, or EDI. Industries such as banking, retail, credit cards, and trucking have established voluntary, industry-wide EDI standards. However, the data being exchanged are largely alphanumeric, rather than purely textual. Hence, a large segment of the information handled by the courts falls outside the traditional EDI ambit, requiring standards other than those already developed by the X.12 committee.

In June 1990, lawyer members of the X.12 committee recruited interested judges and lawyers from the American Bar Association (principally the Judicial Administration Division and the Section of Science and Technology), the Federal Judicial Center, private law firms, and others to explore the creation of EDI standards for use in the legal industry. The need was clear and the response strong.

Following a June 1990 ANSI meeting, chaired by Prof. Henry H. Perritt, Jr., of Villanova University, a judicial EDI consortium was formed to pursue the creation of new standards. The consortium added representatives of the National Center for State Courts, court-management associations, several software and legal service corporations, and the Administrative Office of the U.S. Courts. The consortium agreed to establish a working group to develop national standards for electronic filing and data interchange among courts, judicial and executive branches, and practicing attorneys.

The group analyzed the types of information that need EDI standards, and identified court filings, lawyer-to-lawyer communications, criminal-justice and bankruptcy information, court-management data, and judicial-executive branch interface information. Although broad, that list was clearly not comprehensive.

They identified the following seven needs of both filers and the courts:

- provide legally sufficient authentication of documents transmitted electronically;
- transmit exhibits and other documents attached to pleadings;
- provide a consistent format (e.g., the appearance of the document filed);
- provide document standards (e.g.,

margins, lines per page, page breaks, and paragraphs);

- verify filings;
- store and retain files; and
- ensure security and integrity of documents after filing.

The consortium set itself three tasks: (1) establish broad-based participatory working groups to develop electronic filing standards for the courts; (2) establish a well-defined process for creating those stan-

dards; and (3) establish several standards that bring immediate and dramatic benefits to users. Initially the consortium saw itself as a threshold approval body that would coordinate and supervise development of new standards and shepherd those standards through the X.12 committee approval process. In reality, however, those developing the appli-

cation wanted complete control of their own work. Thus, the consortium evolved into a forum for information, a mechanism for organizing seminars to develop basic concepts, and a place where interested parties could find technical resources needed to pursue developmental efforts.

Pilot Project Initiated

The Administrative Office initiated the first pilot project. In late 1990, the bankruptcy courts were overwhelmed with paper. There were almost 1 million bankruptcies per year, corporate bankruptcies cost billions of dollars, and each of the larger cases involved tens of thousands of claims. The Administrative Office had automated the bankruptcy courts more than any other segment of the federal courts, revising some 50 standard forms used in these courts to be computer readable—the revised forms included the initial filing form. The X.12 committee approved Standard Forms 175 and 176, the first computer-readable legal forms, which were developed by the AO. Those standards are available for use in other courts, and a pilot project at the Nuclear Regulatory Commission will seek to establish their use for administrative adjudications.

Ultimately, the consortium became the JEDDI Corporation, a nonprofit 501(c)(3) organization pursuing the same goals as the consortium, with one change. The JEDDI Corporation now seeks to promote and support all electronic filing projects on the theory that it is too early to choose a single standard such as EDI. In fact, the second most completely developed electronic filing system is in Utah and uses the Internet and the Hypertext Markup Language widely used on the World Wide Web. JEDDI Corporation's board of directors includes state and federal judges, practitioners, information providers, and hardware and software developers. JEDDI's most important objective now is to establish national compatibility standards for electronic filing.

Although the ultimate number of standards may be large and the problems mind-boggling, the benefits could revolutionize our legal system. Attorneys could electronically file in court and search court records without ever leaving their offices. For litigators, the proverbial "race to the courthouse" would be reduced to a nanosecond. State and federal courts could build central systems from those filings to manage the entire range of their work, from dockets to trials to orders to reports to instant communication with executive agencies dealing with traffic, the criminal justice system, and child support.

The JEDDI Corporation is seeking advice and assistance. To join, call Clyde Christofferson at (703) 281-1775, or fax at (703) 281-6385. □



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A note to our readers

The *State-Federal Judicial Observer* welcomes comments on articles appearing in it and ideas for topics for future issues. The *Observer* will consider for publication short articles and manuscripts on subjects of interest to state and federal judges. Letters, comments, and articles should be submitted to Interjudicial Affairs Office, Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20002-8003.

Toward Paperless Utah Courts: The Vision

by Alan Asay

former member, Data-Processing Unit
Utah Administrative Office of the Courts

In its 1991 report, the Utah judiciary's Commission on Justice in the Twenty-First Century prescribed electronic filing of court documents in its short-term and long-term goals, stating:

Short-Term Goals (1-5 Years)

- The courts should permit the initiation of any case by electronic filing from remote locations.

Long-Term Goals (5-10 Years)

- Records in all courts should be automated and should be electronically retrievable by the bar, other governmental agencies, the public, and the media from remote locations, subject to appropriate protections for privacy, confidentiality, and security interests in keeping with existing constitutional and statutory requirements.

- Imaging systems should replace or supplement present filing systems in all courts of record.

- The judicial system should move to an essentially "paperless" court.

With open systems installed, the courts are in a position to begin realizing the vision of a court in which records, including case files, are kept electronically insofar as practicable.

Electronic files have the following advantages over paper files:

- Paper records create custody problems (such as lost files) and administrative hassles (such as checkout controls) imposed to prevent custody problems.

- Paper records are much more cumbersome to store, retrieve, and copy than electronic records.

- With paper records, users cannot as easily locate relevant portions as in electronic records, which can be quickly and easily word-searched and grouped by computer. Easily made copies of electronic records can also be marked up, highlighted, annotated, excerpted, and pasted while leaving the original intact.

- Keeping electronic case files enables court officers to use the case files, eliminating interpretation and data entry by court clerks—interpretation and data entry are major sources of error. If the case file is electronic, the electronic database can automatically update and validate itself by reference to the case file. Electronic filing also forces filing parties to resolve the data questions themselves, without the clerk having to guess at and interpret vague or erroneous information in order to get it accepted into the database.

However, a paperless court has the following potential drawbacks:

- Display technology: Computer monitors are more limited than paper in display capabilities. Paper ordinarily presents a more fine-grained and larger image than most PC monitors.

- Portability: Paper can go more places more easily than a computer and monitor, even a laptop computer. However, this drawback does not weigh very heavily, because court case files are generally used only on court premises where computers are common and computer records can be turned into paper simply by printing them. Requiring users to print a copy rather than take the original avoids custody problems.

- Lack of familiarity with computers: Many users of court records, including many judges, lack familiarity with computers and are not comfortable using them.

Paper records seem to some people to be more permanent and reliable than electronic records, which may appear more ephemeral because they are shown on a screen and copied into computer memory. In addition, records stored on magnetic media can be erased or altered without leaving traces of the original. However, courts can create electronic filing systems that can ensure computer security and protection against document tampering, and these systems would yield a medium as safe as paper.

The downsides seem outweighed by the advantages of electronic filing, but because some of the downside hurdles can be cleared only by changing deeply entrenched ways of doing business, progress toward a paperless court needs to be gradual.

The following three stages can be envisioned:

Stage 1—Electronic filing is an optional alternative to paper filing. Electronically filed documents are also kept in paper form, and a document can be used in either paper or electronic forms, at the user's option. Electronically filed documents have the advantage of being automatically transferred and entered into the court database system. Use of the electronic form becomes common and trusted.

Stage 2—All documents are required to be filed in electronic form, and programs for searching and retrieving electronic documents are available. The document system is fully integrated into the court's case man-

agement and legal research systems. The national standards for using and validating electronic signatures are fully implemented. Time rules are reliably calculated based on the date on which a document is electronically filed. Because of its superior utility, the electronic form comes to be more extensively used than the paper form.

Stage 3—The general preference for electronic documents has made paper documents redundant, and the reliability of electronic documents is beyond question. The Judicial Council therefore discontinues the keeping of nonevidentiary court files on paper, except perhaps in pro se or hardship cases.

During the summer of 1993, the Utah Administrative Office of the Courts' Data-Processing Division developed the capability of realizing a fully functional, but not mandatory, paperless court. Its efforts are continuing, so that those goals can be achieved. □

BENEFITS, from page 1

mal standards status by the federal government (as a federal information processing standard (FIPS)), and by national standards organizations.

EDI standards are useful for capturing data in a structured format. The federal courts, in cooperation with the National Center for State Courts and the Common Legal Data Workgroup, have identified many of the basic data structures that are commonly used by courts and developed them into two generic court EDI transactions.

Court notice and court submission transactions have been approved by a committee of the national standards body that deals with computers. The court notice and court submission transactions provide the possibility for two-way transfers of data between databases in the court and in law offices.

One of the important innovations in these EDI transactions is a description of court events using natural language and simple vocabulary.

The basic concept makes use of standard categories of typical court events and actions, combined with court-specific lists that provide many of the details of what kinds of motions, orders, criminal charges, and other procedures are used in the ordinary course of court business.

The benefits of this approach are increased when the courts use EDI to send event information to attorney databases, as well as to receive documents with data from attorneys. This exchange of information is typical of successful electronic efforts in private industry.

Bankruptcy is one area of experimentation in the federal courts. Five courts are currently experimenting with electronic bankruptcy notices. Bankruptcy courts generate more than 50 million notices each year. Electronic filing of those notices would significantly reduce mailing costs.

Electronic bankruptcy notices include orders, hearings, requests for claims, and other case-related events, along with party and attorney names, identification numbers, and contact information. EDI notices will be sent to major institutional creditors.

Another bankruptcy EDI experiment is the electronic filing of petitions and schedules, which are a variety of related forms containing check boxes, lists of creditors, assets, liabilities, income, expenditures, and, for some kinds of information, related addresses.

There are many possible benefits to be derived from electronic filing. Information processing standards are key building blocks for this innovation in three major information categories: structured data; unstructured text; and the wide variety of graphics and images available. To realize these possibilities, vendors, attorneys, creditors, and courts must work together to build powerful products based on information processing standards. □

How a Fully Implemented Electronic Filing System Would Work—The Plan of the Utah Court

by Alan Asay

The Utah Administrative Office of the Courts' Data-Processing Division believes court case file documents would be filed in court and used electronically as follows:

1. The filing attorney or the attorney's legal secretary types the court document using whatever word processor the law office has, and the document is edited until it is in final form.

2. When the document is in final form, the secretary marks it up for inclusion in the database and the electronic case file. The marking-up process uses Standard Generalized Markup Language (SGML), an international standard and well-developed technology for identifying data and textual elements in a free-form document.

SGML thus provides a common denominator among varying word-processing software and a means for the database at the courthouse to identify data in a document with only minimal prescriptions for the form of the document.

3. The attorney electronically signs the document. An electronic signature is an "encrypted" appendage to the document. The signature is encrypted using a key word known only to the signer. By entering another key word, the court can verify that the signature is genuine, but neither the court nor anyone else without the signer's key can affix or reproduce the electronic signature.

Besides authenticating the sender's identity, the electronic signature ensures the integrity of the message, i.e., that the message remains exactly as it was sent until it is received. Under a national standard, electronic signatures are issued and changed by a coordinated system of authorities.

4. The attorney or secretary electronically mails the document to courtlink, a central communications computer at the

Utah Administrative Office. The electronic mail would be addressed to a "pseudo-user" such as "SLC-Filer." If the mail system does not conform to the industry-standard mail protocols used at the Utah Administrative Office, additional hardware would need to be installed at the law office to act as a gateway.

5. When courtlink receives mail addressed to "SLC-Filer," it opens it and scans the documents to make sure that all required data are identifiable (e.g., that the document has a case number and parties' names).

If the required data are not identifiable, either because they are missing or not correctly marked, the document is returned immediately via electronic mail with a message stating that the document is rejected and informing the sender of the reason for rejection. If the document is acceptable, it is forwarded from courtlink to the local court's data server, the machine on which the local court's database resides.

6. The local data server then does the following:

- a. attaches a brief header to the document reading, for example, "The following document entitled [title data] in the case of [plaintiff's name data] v. [defendant's name data], case no. [case no. data], was received by electronic filing in the [court] on [date stamp] at [time stamp]";

- b. stores the document with its header on disk;

- c. extracts data from the document and adds the data to the database;

- d. returns to the filing party a copy of the document with its header; if the document has initiated a new case, the returned document would contain the case number and the judge assignment; and

- e. if paper files are still being kept, prints a copy of the document including its header for inclusion in the paper file.

7. The filing party receives the returned copy and can store it for reference. The filing party could also check the court database, view or copy the document, and note that it appears as filed in the case history report.

Completing an entire electronic filing transaction should take under one minute, probably only 10 seconds or so if the document is not long.

After the document is filed, the local data server would prepare it for presentation and searching.

Documents could be viewed, copied, printed, or word-searched from court computers or by users outside the courthouse.

Once installation of the new open systems is completed, there will be in place most of the technological infrastructure necessary for electronic filing, including:

- electronic mail and rapid, reliable computer-to-computer communications;

- secure, interactive, and easy access to court computer systems by outside users;

- a powerful, well-functioning, and full-featured database and supporting hardware; and

- software for searching, retrieving, and presenting text, and high-quality computer display capabilities.

Aside from the technological and administrative aspects, the notion of a transition to a paperless court has a human side. It would involve changing the way judges, attorneys, and others obtain information from case files. It could reduce substantially the work required of court clerks.

Changes in court rules will be required to facilitate progress toward paperless courts. It will be important, in moving toward a paperless court, to listen to the people who will be using the system, and a forum is needed to discuss and resolve issues and to provide oversight for the technological development process. □

JEDDI Corporation May Soon Provide Starter Kits for Electronic Filing

by Clyde Christofferson
of the Virginia bar

The JEDDI Corporation may soon be able to provide a series of packages from which a judge or court administrator from any court could select and create a "starter kit" for electronic filing in that court.

[Further information about the JEDDI Corporation can be found in the *Obiter Dictum* column on page 2.]

For example, under the auspices of the JEDDI Corporation, court filing markup language (CFML) templates and corresponding specifications for courthouse software could be developed for typical state courts (both large and small), federal courts, specialty courts, and integrated hierarchical court systems, with variations for trial and appellate levels.

A template and court-related software have already been pioneered by the Administrative Office of the Courts in Utah.

Participants in the JEDDI Corporation project have compiled a set of forms and practice guides for some jurisdictions, and these guides may be helpful in building additional templates.

A number of pilot projects have tested the technology for electronic filing. Perhaps the longest-running experiment is the LEXIS-inspired complex litigation auto-

mated docket (CLAD) project, which was first run in Delaware and designed to handle complex multiparty litigation. The Administrative Office of the Courts in Utah has been testing an approach using the Internet.

Electronic filing is being implemented in U.S. bankruptcy courts. It is, under the prodding of Judge Arthur M. Monty Ahalt, now being used in Maryland state courts in Prince George's County. It has also been installed in the U.S. District Court for the Northern District of Ohio in Cleveland [see related story, page 1].

These pilot programs are being pushed by the promise of cost savings and increased efficiency for courts. A small but growing number of attorneys are becoming familiar with the necessary technology, especially since the dramatic increase in the use of the Internet. But the tools for electronic filing are not as familiar or as simple as using a fax machine, which means general use of this technology is still down the road.

Consequently, there is still time to anticipate and address a number of practical issues that lawyers and judges will face as courts move toward electronic filing. The consortium of judges, lawyers, court administrators, and vendors, now incorporated under the name JEDDI, is providing a forum and vehicle for this effort, which

adapted from commercially available products.

JusticeLink in Upper Marlboro, Md., has advantages for lawyers, judges, and court clerks. Preliminary studies show that a lawyer can reduce costs through electronic filing by 10-15%. In addition, JusticeLink is available for use 24 hours a day, 7 days a week. Lawyers can file documents, obtain court information, access court legal records, conduct research, communicate with the court and clerk's office, and communicate electronically with other subscribers at any time.

The change to electronic filing in Prince George's County required a change in the Maryland Rules of Civil Procedure. Civil Rule 1217A allows electronic filing pilot projects in Maryland circuit courts when they are approved by the Maryland state court administrator.

For the federal courts, in September 1995 the Judicial Conference of the United States approved amendments to the Federal Rules of Civil Procedure that allow federal district courts to accept electronic filings if they are consistent with technical standards approved by the conference. Similar rules were approved for appellate and bankruptcy courts. The amendments, now pending before the U.S. Supreme Court, are scheduled to become effective on December 1, 1996.

Judge Ahalt said that the first phase of the Maryland pilot project is a "definite success," and the court is ready to proceed to the second phase, which involves enrolling more lawyers and expanding the information in the court files available electronically to the three participating judges.

But he is also looking beyond his own courthouse. "This venture [in Prince George's County] will be an absolutely useless exercise," he said, "if we don't start addressing the interstate problems, the interjurisdictional problems, the regional problems, the inability of our counties in one state to communicate with each other about their legal business."

Further information about the pilot program in Prince George's County can be obtained from Judge Arthur M. Monty Ahalt, Seventh Judicial Circuit of Maryland, P.O. Box 609, Upper Marlboro, MD 20773, phone (301) 952-4520.

Further information about the pilot program in the federal court in Ohio can be obtained from Gary Bockweg, Office of Technology Enhancement, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20002, phone (202) 273-2736. □

began almost three years ago.

In early May 1993, a group of interested parties from the courts, the bar, and businesses serving the legal community met at the National Center for State Courts in Williamsburg, Va., to discuss prospects for, and begin development of, common guidelines that would facilitate use of electronic media for filing documents, delivering notices, and other exchanges of information between attorneys and courts.

The group at Williamsburg raised several further concerns, including special records associated with specialized courts, citations to electronic records (e.g., court opinions), and electronic means for paying court fees. They saw that the guidelines they were looking for had to overcome a fundamental tension: the courts need flexibility and generality, while vendors need definition and specificity.

Such guidelines must leave each court free to adopt specifics of its own choosing. If the guidelines are perceived as constraints that unduly interfere with the way courts or clerks conduct their business, they will not be followed. If they are not followed, a common market will not develop and vendors will hesitate to make the necessary investments in product development and support.

The guidelines must be sufficiently well defined that vendors can produce products that have the desired attributes with a minimum of further customization for specific courts. If the guidelines are vague or weak they will not support implementable product specifications. If the product cannot be specified until information specific to a particular court is known, there will be no common market.

Suitable guidelines will have to meet the

following tests. As viewed by judges, the guidelines must allow flexibility to fit local practice and procedure. As viewed by court administrators, the tailoring process will have to be responsive, i.e., can be done in a timely fashion with available resources. As viewed by lawyers, the guidelines must be compatible across jurisdictions, in the sense that a lawyer can obtain from a single vendor a product that serves all of the courts in which the lawyer practices. As viewed by software vendors, the guidelines must be well defined enough to permit a vendor to develop a product usable in any court that complies with the guidelines. Finally, those vendors providing information services to the legal profession should be able to accommodate the guidelines in their product offerings.

The potential of the World Wide Web also needs to be developed for the benefit of the courts.

It is now reasonably clear that the relevant technology must accommodate the inevitable evolution of courthouse procedures for handling documents and cases. Courts need flexible tools, not a computer system designed for one point in time. Courts and clerk's offices center on documents, not on data elements that are the historical base of computer systems.

Converting to electronic filing will often be a difficult process, requiring patient efforts to familiarize judges, clerks, and lawyers with the applicable technology. The challenge to the JEDDI Corporation is to provide the leadership in familiarizing judges and court administrators about electronic filing and its advantages, and to make the promise of electronic filing starter kits for all kinds of courts throughout the United States a reality. □

FILING, from page 1

Prince George's County is also experimenting with a system called CivicLink, which uses electronic means to provide information to lawyers and members of the public about civil case information (parties, attorneys, judgments, appeals); criminal case information (case name, details of case, motions, and other events); attorney and case assignments; and property tax information (tax records, property descriptions, and tax valuations).

With both systems in Prince George's County, there are fees involved. For JusticeLink, a subscribing lawyer must pay an initial fee of \$175. Other fees are \$15 for filing each document and \$.50 per minute for computer time on the system.

After a \$100 deposit is made for a user account, CivicLink costs \$5 or less per transaction.

The electronic filing system installed in the U.S. District Court in Cleveland is part of a pilot project inaugurated by the Administrative Office of the U.S. Courts. That district court was selected because of the large number of maritime asbestos cases that have been filed there in recent years.

Chris Malumphi, deputy clerk in the Ohio court, said that last year there were over 5,000 maritime asbestos cases filed in his court, or over 400 cases each month, adding to the 18,000 similar cases that had been filed in earlier years. These asbestos cases generate yearly over 500,000 pleadings, or approximately 10,000 pleadings a week.

The manual docketing system created a 13-month backlog in docketing entries.

The electronic filing system for new cases will result in almost instantaneous docketing of each pleading as it arrives at the court clerk's computer terminal.

All of the filings in the Ohio court to date have been maritime asbestos cases, about 500 complaints, and answers from some of the defendants. Each case has approximately 100 defendants, represented by over 400 different law firms. Ninety percent of the law firms representing the primary defendants in the various cases have signed up to participate in the pilot project.

In the federal court in Cleveland, there are no fees levied against the lawyers for the pilot program, although the Administrative Office of the U.S. Courts predicts that some kind of user fees will be installed when electronic filing becomes more universal. Also, there is no private consulting firm involved. The software has been developed by the Administrative Office and

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